

Comptroller General of the United States

C-O-P-Y

B-143722

August 2, 1962

Lieutenant General Marshall S. Carter, USA  
Acting Director  
Central Intelligence Agency

Dear General Carter:

Your letter of July 17, 1962, requests our decision on several questions emanating from regulations [REDACTED] adopted by your agency concerning the payment of separation compensation to certain career personnel who are separated as surplus to the needs of the service. The question of the authority to promulgate such regulations was the subject of our decision of August 31, 1960, B-143722, to the former Director, Central Intelligence Agency.

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You point out that the philosophy behind the payment of separation compensation to employees terminated as surplus is basically to provide a person designated as surplus with a sum of money to facilitate his change-over to different employment or work.

The circumstances and questions arising therefrom as stated in your letter are as follows:

"An individual deemed qualified receives an initial payment of separation compensation under [REDACTED]. The initial payment is calculated on the basis of his salary rate at the time of termination for a four-month period. It is proposed that this payment be considered as related to past service rather than payment of salary for the succeeding four months. In administering this program, it is apparent that some individuals who receive the initial payment thereafter will be employed for one reason or another within that four-month period, some by the Government and some by other employers, while others will not.

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"Question 1. Are these initial payments free from dual compensation restrictions? (yes)

Subsequent payments, though delayed in time, are based on the same theory as initial payments.

"Question 2. Would subsequent payments also be free from dual compensation restrictions? (yes)

Document No. 1  
Review of this document by CIA has determined that

☐ CIA has no objection to declass

☒ It contains information of CIA interest that must remain classified at TS S (S)  
Authority: HR 70-2

☐ It contains nothing of CIA interest

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"Paragraph b(2) of [REDACTED] states:

"Individuals who are eligible for an optional retirement annuity without reduction for being under age 60 shall not be eligible for separation compensation. Individuals who are eligible for discontinued service annuities will be eligible for separation compensation in accordance with the provisions of subparagraphs d and e, below."

"Question 3.

"a. If an individual reaches optional retirement age after termination, would it be necessary to discontinue separation compensation payments to him at that time? *Yes*

"b. If an individual terminated under the program later applies for, and is approved for, disability retirement, will it be necessary to discontinue payment of separation compensation at that time?

"c. In a situation where, after some separation payments are made to an individual, it is learned that he has been receiving in addition a disability retirement annuity, will it be necessary to recover back the total money paid as separation compensation?

*Should some manner or discontinued service annuity (offset)*

"Paragraph d(1) of the regulation states that the maximum separation compensation allowance shall be equivalent to one month's salary for each year of continuous Agency service, and proportionately for each fraction of a year, the total allowance not to exceed the equivalent of twelve months' salary as thus computed. It seems that the word 'continuous' in that provision of the regulation is superfluous. We would like a person eligible for separation compensation to receive payments based on his full Agency service, and we feel that it would not be in the best interests of the surplus personnel program to consider that a break in service of even one day would serve to deprive a person of separation compensation based on that total period of service.

"Question 4. Would it be correct to interpret this regulation to mean that a person may be authorized separation compensation based upon his total Agency service?" *Yes*

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Referring to question 1, we agreed in our decision of August 31, 1960, that separation compensation reasonably could be viewed as a type of deferred compensation for past services. In view thereof, it may be said that such compensation payments, not being predicated upon or regarded as service for any period subsequent to separation, are not subject to any dual compensation or dual employment restrictions and thus question 1 is answered in the affirmative.

Question 2, for the same reason, is likewise answered in the affirmative.

Concerning question 3, we think there is no alternative under paragraph b(2) of [REDACTED] but to discontinue separation compensation payments when an individual reaches optional retirement age after separation. Therefore, the "a" portion of question 3 is answered in the affirmative.

As to the "b" portion of question 3 we note that the regulations do not specifically mention disability retirement. However, under subparagraph "a" of the regulations the payments other than the initial payments are subject to deduction of "civil service retirement annuity received or accrued." Therefore, our view is that the term "civil service retirement annuity" as used in the regulations embraces disability annuities granted under the Civil Service Retirement Act. We answer portion "b" of question 3 by saying that separation compensation payments to disability retirement annuitants should be handled in the same manner as separation payments to individuals eligible for discontinued service annuities under section b(2) of [REDACTED]. In view of that answer the "c" portion of question 3 is apparent, namely, that the recovery should be limited to the separation payments made after the initial payment.

In connection with question 4, the language in which the word "continuous" appears is somewhat ambiguous. Therefore, we see no objection to viewing such provision as relating to total service, since that appears to be what was originally intended. However, we suggest the regulations be amended to omit the word "continuous."

Sincerely yours,

/s/

Comptroller General  
of the United States

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